

AARON D. FORD
Attorney General
ALEXANDER J. SMITH (Bar No. 15484C)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 East Washington Avenue
Suite 3900
Las Vegas, Nevada 89101
(702) 486-4070 (phone)
(702) 486-3773 (fax)
Email: ajsmith@ag.nv.gov

*Attorneys for Defendants
William Glass, Dwight Neven,
David Molnar, and Quentin Byrne*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MICHAEL McNEIL,

Plaintiff,

v.

DAVE MOLNAR, *et al.*,

Defendants.

Case No. 2:18-cv-01594-RFB-BNW

**NOTICE—IN ADVANCE OF THE
OCTOBER 12, 2021 HEARING ON
PLAINTIFF’S MOTION TO COMPEL
THE PRODUCTION OF
DOCUMENTS—THAT DEFENDANTS
HAVE DISPATCHED TO PLAINTIFF
THE BELOW STIPULATION TO
EXTEND THE DISCOVERY CUTOFF
DEADLINE AND THE DISPOSITIVE
MOTIONS DEADLINE**

Defendants, William Glass, Dwight Neven, David Molnar, and Quentin Byrne, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Alexander J. Smith, Deputy Attorney General of the State of Nevada, Office of the Attorney General, hereby inform the court in advance of tomorrow’s motion to compel discovery hearing that for the reasons outlined below, Defendants have dispatched to Plaintiff Michael McNeil the below stipulation to extend the discovery cutoff deadline and the dispositive motions deadline. Also, the stipulation provides the court with further information on McNeil’s motion to compel and Defendants’ response.

**JOINT STIPULATION AND (PROPOSED) ORDER TO EXTEND THE
DISCOVERY CUTOFF DEADLINE AND THE DISPOSITIVE MOTIONS
DEADLINE**

[FIRST REQUEST]

Defendants, William Glass, Dwight Neven, David Molnar, and Quentin Byrne, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Alexander J. Smith, Deputy Attorney General of the State of Nevada, Office of the Attorney General, hereby stipulate and request an order to extend the discovery cutoff deadline by sixty-days and to extend the dispositive motions deadline accordingly. ECF No. 43 states that “[d]iscovery will close on 10/21/2021; dispositive motions are due 11/22/2021; and the joint pretrial order is due 12/22/2021[.]”

The parties are mindful that they must demonstrate good cause for an extension of the discovery deadline and that all stipulations to extend must generally be received by the court no later than twenty-one days prior to the date fixed for completion of discovery. However, due to a number of factors, this has not been possible, but the parties, particularly Defendants, believe they can demonstrate excusable neglect and why a sixty-day extension of the discovery deadline is warranted. The parties therefore request a sixty-day extension of the discovery deadline from October 21, 2021, to December 21, 2021.

On September 8, 2021, Attorney Smith spoke on the telephone with Plaintiff Michael McNeil, who was very polite, amicable, and understanding. Attorney Smith explained that because of the manner in which McNeil had worded his discovery requests, Defendants have had difficulty deciphering some of their contents, and relevant documents and requested feedback is taking longer than usual to obtain. Also, McNeil included multiple requests within the same documents, which has further compounded difficulties. However, Defendants wish to work with McNeil.

At that time, Attorney Smith informed McNeil that he planned—in good faith—to dispatch documents to him by the end of the following week, but they would contain objections because of the way in which the requests are worded. In an attempt to come to an amicable solution, Attorney Smith asked McNeil whether he would consider agreeing to

1 stipulate to a sixty-day extension of discovery and the dispositive motions deadline, which
2 would give McNeil additional time to conduct further discovery and object to any of the
3 Defendants' objections.

4 On September 13, 2021, Defendants responded to McNeil's August 30, 2021 motion
5 (ECF No. 45) to compel the production of documents; they informed the court that following
6 the September 8, 2021 meet-and-confer, the parties had resolved the discovery dispute at
7 issue. Several weeks later, Attorney Smith again contacted McNeil to explain the delay and
8 to state that he would dispatch to him a stipulation to extend the discovery cutoff; also, the
9 former suggested to McNeil that the issue could be raised and requested orally at the
10 forthcoming motion to compel hearing.

11 Just recently, the Office of the Attorney General (OAG) has lost many attorneys,
12 including both senior members of staff—team leaders—in the Las Vegas Office, and over
13 half a dozen attorney vacancies require filling. Recruitment is still ongoing. The Public
14 Safety Division of OAD had spent over two-months transitioning to a "team model,"
15 meaning that instead of each Deputy Attorney General (DAG) having primary
16 responsibility for his or her own cases, each DAG was organized into a specific team and
17 had tasks assigned. Thus, attorneys and others had to familiarize themselves with many
18 new cases and attend hearings at short notice, which involved last-minute preparation.

19 In August alone, straight after he sat for the Nevada Bar Exam, Attorney Smith
20 billed 275 hours, and that decreased slightly in September to just over 240 hours. Attorney
21 Smith's team lost several members and thus the workload kept increasing. Finally, because
22 the seniors—the team leaders—quit at short notice, the Division has had to transition away
23 from the team model to reallocating a large number of individual cases to attorneys, which
24 has necessitated many DAGs receiving in excess of twenty-five new cases in addition to
25 those with which they already have familiarity, and many of these have involved various
26 counsel having to deal with last-minute discovery and dispositive motions deadlines that
27 require counsel moving for extensions. Again, until the staffing issue is sorted, DAGs in
28 this Division are working long and hard to deal with the increased workload and backlog.

1 The reversion from the team to the individual case responsibility method has meant
2 that for several weeks the individual calendars have been in disarray, with individual
3 DAGs sometimes having to decipher three or four separate calendars to check their newly
4 assigned cases and responsibilities. Inevitably, this has resulted in duplicative efforts and
5 some other events falling through the cracks.

6 Also, both paralegals in the Las Vegas office have taken time off for surgery, and
7 because of the team method, responsibility for discovery in over 800 separate cases has
8 shifted back and forth with different support staff working on different aspects of the same
9 case. Ensuing communication difficulties have made discovery extra hard. Attorney Smith
10 has worked diligently to ascertain the status of McNeil's discovery requests and just this
11 afternoon received a communication from his paralegal—who returned from sick leave
12 today—about the above in which she informs Defendants that OAG received discovery
13 requests on or around July 29, 2021; they were quite voluminous and untimely.

14 On August 1, 2021, before Attorney Smith returned from study leave, Senior Deputy
15 Attorney General Katlyn M. Brady, one of the seniors who recently terminated her
16 employment with OAG and who covered this case in Attorney Smith's absence, indicated
17 to the relevant paralegal that she wished to extend discovery in this action. Outside of that,
18 Attorney Brady apparently requested some witness information because an affidavit was
19 filed with two inmates purportedly vouching for McNeil's allegations of what occurred in
20 the incident in question in this lawsuit. Again, because of the transition to the team model,
21 staff illness, a severe shortage of attorneys in the Division, the continual reallocation of
22 cases and assignments, and the abrupt departure of both team leaders, uncertainty has
23 reigned and remaining attorneys are dealing with a higher caseload—under greater time
24 pressure and without the supervision of senior attorneys—than usual.

25 What the parties propose—in order to alleviate McNeil's understandable worry
26 about having enough time to respond to discovery, to object, and to request further
27 discovery—is an extension of the discovery cutoff date in order for Defendants to locate the
28 information that McNeil requests. Also, this stipulation informs the court as to the

1 circumstances why the parties failed to stipulate to an extension sooner than today—and
2 on the eve of McNeil’s motion to compel hearing, and the above describes why McNeil’s
3 requests have not been forthcoming.

4 Defendants admit that OAG’s staffing problems are not the responsibility and fault
5 of either the court or McNeil, but the staff shortage, recent departures, and the change
6 from one method of work to a team model then back has had a very real impact on the huge
7 number of cases—some 800 plus—that a small number of attorneys must deal with.
8 Everyone in the Division works overtime in order to catch up with the backlog.

9 McNeil’s discovery requests contain several deficiencies, but as the parties discussed
10 on the telephone, Defendants are prepared to work with McNeil to iron out these problems
11 to avoid judicial intervention. Defendants thus assert that they demonstrate excusable
12 neglect for failing to dispatch a stipulation to McNeil earlier than today and have valid
13 reasons for why McNeil’s requests are taking much longer to obtain than expected.

14 Finally, because the parties’ ability to conduct discovery is still hampered
15 significantly by difficulties stemming from COVID-related restrictions and personnel
16 reductions at the Nevada Department of Corrections, and the parties’ mutual agreement
17 that neither will be prejudiced by the granting of such an extension, the parties believe
18 firmly that good cause exists for the granting of the requests outlined above. They continue
19 to diligently prosecute and defend this action, respectively, and believe it that the interests
20 of justice warrant judicial approval of this stipulation to extend the discovery cutoff
21 deadline by sixty days.

22 **I. Discovery Completed**

23 LR 26-3(a) requires the parties to provide “[a] statement specifying the discovery
24 completed.” McNeil’s motion (ECF No. 45) to compel succinctly outlines the discovery
25 requests that he has served on Defendants. (ECF No. 45 at 1–2) As is evident therein, and
26 backing up what is outlined above, several different attorneys and paralegals have handled
27 discovery in this action; because the upheaval of both office changes and staff departures
28 necessitates urgent reallocation of cases, problems have occurred.

1 Also, as is common in many inmate-litigation cases, and due to the unique nature of
2 a tightly controlled custodial environment, Defendants have access to all the discovery they
3 need and do not anticipate serving any requests on McNeil. As McNeil notes, his time is
4 being eaten up due to the delays (ECF No. 45 at 2–3), and therefore all parties agree that
5 an extension is warranted.

6 **II. Discovery Remaining**

7 LR 26-3(b) requires the parties to provide “[a] specific description of the discovery
8 that remains to be completed.” As explained above, because of a perfect storm of attorney
9 resignations, staff sickness, the nature of McNeil’s requests, and a second recent re-
10 organization of work practices at OAG, McNeil’s discovery requests remain pending, but
11 Defendants are working in good faith to respond to those and to work with McNeil in
12 obtaining for him any further discovery that he requests.

13 **III. Reason for Requested Extension**

14 LR 26-3(c) requires to the parties to explain “[t]he reasons why the deadline was not
15 satisfied or the remaining discovery was not completed within the time limits set by the
16 discovery plan.” See above; the reasons are outlined in great depth.

17 **IV. Proposed Extension of the Scheduling Order Deadline**

18 With judicial approval, the parties jointly propose extending the discovery cutoff
19 date from October 21, 2021, to December 21, 2021, with dispositive motions due no later
20 than January 20, 2022.

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In consideration of the above, good cause exists for the parties' requested extension,
which is not for purposes of delay.

DATED this ____ day of October, 2021

DATED this 11th day of October, 2021

AARON D. FORD
Attorney General

By: _____
MICHAEL MCNEIL, #65311
Plaintiff, *Pro Se*

By: /s/ Alexander J. Smith
ALEXANDER SMITH (Bar No. 15484C)
Deputy Attorney General
Attorneys for Defendants

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

DATED: October 12, 2021

DATED this 11th day of October, 2021.

AARON D. FORD
Attorney General

By: /s/ Alexander J. Smith
ALEXANDER J. SMITH (Bar No. 15484C)
Deputy Attorney General
Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on October 11, 2021, I electronically filed the above **NOTICE—IN ADVANCE OF THE OCTOBER 12, 2021 HEARING ON PLAINTIFF’S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS—THAT DEFENDANTS HAVE DISPATCHED TO PLAINTIFF THE BELOW STIPULATION TO EXTEND THE DISCOVERY CUTOFF DEADLINE AND THE DISPOSITIVE MOTIONS DEADLINE** via the court’s electronic filing system. Parties who are registered with the court’s electronic filing system will be served electronically. Also, because of the urgent nature of this filing, Defendants will also attempt to serve on McNeil—via either his caseworker or a member of the Warden’s Office—a copy of this filing before tomorrow’s motion to compel hearing.

Michael McNeil, #65311
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301
Email: ESP_LawLibrary@doc.nv.gov
Plaintiff, Pro Se

/s/ Natasha D. Petty
NATASHA D. PETTY, an employee of the
Office of the Nevada Attorney General